

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAY WALKER-CLARK and RESOLUTION TRUST CORPORATION,
METROPLEX CONSOLIDATED OFFICE, Dallas, TX

Docket No. 03-443; Submitted on the Record;
Issued May 19, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 19, 2001.

On September 23, 1992 appellant, then a 28-year-old operations technician, filed a notice of occupational disease alleging that she developed an emotional condition as a result of factors of her federal employment. The Office accepted the claim for major depression due to work-related stress.¹ Appellant stopped work on August 7, 1992 and began receiving compensation on the periodic rolls.

In a March 31, 1995 report, Dr. William J. Rea, a Board-certified thoracic surgeon, indicated that appellant was initially seen by him on March 15, 1995 complaining of depression, intolerance to antidepressants, fatigue, irritability and stress-related symptoms. Physical findings were reported and the results of diagnostic tests showing low levels of T&B lymphocytes and scan of the brain demonstrating decreased activity in the left frontal and parietal lobe consistent with depression and short-term memory loss. Dr. Rea listed under impression the following: (1) depression; (2) neurotoxicity/toxic encephalopathy; and (3) food inhalant and chemical sensitivities. He noted that appellant took a variety of drugs for depression, some of which entered the brain while others lodged in the fatty and organ tissues of the body causing a toxic reaction. Dr. Rea recommended physical therapy, oxygen therapy, a diet plan and utilization of air and water filters.

The record indicates that based on Dr. Rea's report, the Office expanded appellant's claim to include acceptance of blood toxicity as a consequential injury of her work-related depression.

¹ The Office determined that appellant was under stress at work because she was required to work overtime to complete special projects on tight deadlines, she had a heavy workload and was also required to cover for an employee who was off work for several days during 1992.

Appellant first came under the care of Dr. Frank B. Minirth, a Board-certified psychiatrist, on August 27, 1996. The record contains progress notes from Dr. Minirth's clinic dating from August 27, 1996 through July 14, 2000, which describe appellant's treatment for bipolar disorder and depression. Dr. Minirth noted in reports dated October 24, 1996 that appellant was unable to work.

When the Office requested information as to appellant's disability status, Dr. Minirth prepared a report dated July 14, 2000. He opined that appellant was unable to work given her mood swings and the side effects of the medication she was taking to control her bipolar disorder.

In order to ascertain the nature of appellant's continuing disability for work, the Office scheduled appellant for a second opinion examination with Dr. T. William Waltrip, a Board-certified psychiatrist. In a report dated April 11, 2001, Dr. Waltrip indicated that he was skeptical of a diagnosis of bipolar disorder in appellant's case and considered her history, behavior and symptoms to be more consistent with a borderline and dependent personality disorder. He noted that, while appellant continued to complain of disabling depression, there was no objective way to accurately assess the magnitude of her depression. Dr. Waltrip further expressed his concern that appellant would not admit to the abatement of her symptoms at any given time since it was not to her advantage to do so. He answered specific questions posed by the Office. Dr. Waltrip stated that, even if, appellant's workload in 1992 had been stressful, it would not have resulted in major depression for such a long period of time. He specifically stated that appellant's psychological disorder was preexisting and that there would have been only a temporary aggravation of weeks in duration due to the work-related stress in 1992. Dr. Waltrip found no residuals of appellant's work injury. He concluded with his opinion that there was no initial or continuing relationship between the accepted work factors and appellant's ongoing psychological disability.²

In a work capacity evaluation report dated April 12, 2001, Dr. Waltrip indicated that appellant could work four hours per day and gradually increase to eight hours per day over a period of two months. He indicated that appellant could not return to her regular job as it proved to be too stressful for her.

To resolve the conflict in the medical evidence, the Office referred appellant along with a statement of accepted facts and a copy of the medical record to Dr. Cherye Callegan, a Board-certified psychiatrist, for an impartial medical evaluation. She was asked to provide a fully reasoned medical opinion as to whether or not appellant was disabled for work and whether any disability was related to the accepted work injury.

In a July 23, 2001 report, Dr. Callegan opined that it was highly unlikely that stressful situations at work would have caused appellant's current psychiatric illness. While acknowledging the possibility the work situations could exacerbate a person's mental illness, she noted that appellant had not been working since 1992 so work stress could not reasonably explain her mental condition so many years later. Dr. Callegan opined that appellant should

² Dr. Waltrip opined that the record did not support a diagnosis of blood toxicity and stated that the "idea appears to be a misunderstanding of the mumbo-jumbo in Dr. Rea's report."

have improved once she removed herself from the work environment. She further opined that appellant's mental condition would have been expected to resolve after 10 years; however, it only seemed to worsen with time. In her opinion, appellant suffered from preexisting bipolar disorder that manifested itself during the time of her federal employment. Dr. Callegan concluded that appellant was capable of being vocationally rehabilitated at the present time and had no work limitations due to her accepted emotional condition. She attributed appellant's ongoing psychological problems to nonwork-related factors. Dr. Callegan also noted that appellant did not appear at the examination to be experiencing any toxic effects from her medications.

In a September 14, 2001 letter, the Office asked Dr. Callegan whether she felt there was a causal relationship between appellant's depression and her work with the federal government.

By letter dated September 24, 2001, Dr. Callegan advised that in her opinion it is unlikely that appellant's current psychiatric illness has been caused by her federal employment. In addition to the fact that appellant has not worked since 1992, it is highly unlikely that your employment at the Resolution Trust has caused further decompensation or deterioration on your current level of functioning.

On October 18, 2001 the Office issued a notice of proposed termination of compensation on the grounds that the weight of the medical evidence established that appellant had no continuing work-related disability or residuals due to the accepted injury of February 1, 1992.

In a November 1, 2001 letter, appellant responded to the proposed action, indicating that she would submit evidence and argument by November 18, 2001.

Appellant subsequently submitted a November 5, 2001 report from Dr. Minirth, wherein the physician stated that appellant's bipolar disorder was precipitated by work stress that occurred at her job in 1992.³ Dr. Minirth explained that stress at work had resulted in changes in appellant's brain chemistry that in turn triggered a depressive episode. Citing an independent medical study of psychiatry, he reported that it was well accepted in the psychiatric community that "[s]tress commonly precedes the first episode of both major depression and mania." Dr. Minirth concluded that the assertion by the Office that appellant was not totally disabled was heavily disputed by the documentation of her five suicide attempts and hospitalizations."

In a November 19, 2001 letter, the Office asked Dr. Callegan to clarify whether or not appellant's preexisting psychological disorder was caused or aggravated by work factors.

In an addendum dated December 17, 2001, Dr. Callegan reiterated that "there is no causal relationship between [appellant's] psychiatric condition and her work with the federal government."

In a January 7, 2002 decision, the Office terminated appellant's compensation and medical benefits effective November 19, 2001.

³ The record also contains a November 5, 2001 letter from appellant's mother describing appellant's emotional condition.

In a January 18, 2002 report, Dr. Minirth stated that appellant was nonfunctional and totally disabled for work due to symptoms of depression, anxiety and insomnia. There is also a mental status examination from Dr. Minirth on January 4, 2002, which described appellant's general appearance, thoughts, speech process, mental history, mood, memory and judgement as observed by the physician on that date.

Appellant requested a hearing, which was held on June 26, 2002. She submitted a copy of a June 18, 2002 report from Dr. Minirth, who maintained that appellant was totally disabled for work due to bipolar disorder which he attributed to work-related stress appellant experienced in 1992. Dr. Minirth stated: "It is essentially believed by leading authorities that one episode of mania can precipitate further episodes of mania (Essential Psychopharmacology, 2000 p[a]g[e] 267).⁴ This is what I believe happened in this case."

Subsequent to the hearing, appellant submitted copies of medical records to document her treatment for bipolar disease with depression at Columbia Green Oaks hospital by Dr. Joel A. Holiner from January 22 through 29, 2002.

In a decision dated September 19, 2002, an Office hearing representative affirmed the Office's January 7, 2002 decision.

The Board finds that the Office properly terminated appellant's compensation effective November 19, 2000.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of benefits.⁵ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that requires medical treatment.⁷

In this case, the Office accepted that appellant suffered from work-related depression caused by stress in the performance of duty. In order to justify termination of appellant's compensation, the Office has the burden to show that appellant is no longer disabled due to her accepted employment injury and that she has no residuals causally related to her work-related condition of stress-induced depression.

⁴ A copy of the front and first page of the reference book was provided but not a copy of page 267. The Board notes, however, that the publication is generalized and does not therefore establish that appellant's work-related stress caused a permanent aggravation of his bipolar disorder. See e.g., *David McKee Haynes*, 32 ECAB 277 (1980).

⁵ *James B. Christenson*, 47 ECAB 775 (1996); *Wilson L Clow, Jr.*, 44 ECAB 157 (1992).

⁶ *Arthur Sims*, 46 ECAB 880 (1995); *Gary R. Seiber*, 46 ECAB 215 (1994).

⁷ *Arthur Sims*, *supra* note 6.

In order to ascertain appellant's capacity for work, the Office asked appellant's treating physician to prepare a medical report addressing the nature of appellant's work-related emotional condition and whether appellant was able to perform any work. In his July 14, 2000 report, Dr. Minirth stated that appellant remained unstable at the time of his evaluation and this was due to bipolar disorder with resultant depression. Dr. Minirth opined that appellant was totally disabled for all work due to her mental condition.

The Office did not feel that Dr. Minirth's report adequately addressed the etiology of appellant's depression as of July 2000; therefore, the Office scheduled appellant for a second opinion evaluation with Dr Waltrip, who stated in a April 11, 2001 report that appellant's work-related depression due to stress in the workplace had resolved within weeks of appellant ceasing her employment and removing herself from the stressful environment of her workplace. Dr. Waltrip concluded that appellant could gradually return to some type of work for eight hours a day, but not her regular employment as an operations technician.

Given the conflict in the medical record between the opinions of Dr. Minirth and Dr. Waltrip as to whether appellant had any disability for work due to the accepted work injury, the Office correctly referred appellant for an impartial medical evaluation.⁸ Dr. Callegan performed the impartial examination and determined that appellant's continuing psychological disorder was not causally related to stress-induced depression from the 1992 work environment. She explained that appellant's temporary aggravation of her preexisting bipolar disorder with resulting depression would have resolved within weeks of appellant's removal from the stressful work environment. Dr. Callegan felt that appellant's bipolar disorder could be a misdiagnosis but specifically stated that it was not causally related to her federal employment. She stated that appellant's bipolar disorder which included significant depressive episodes prevented appellant from returning to her regular job. However, Dr. Callegan indicated that appellant could begin a light-duty position on a part-time basis to see how she adjusted to a work environment. She specifically opined that appellant was not totally disabled for any reason due to the accepted work injury. Dr. Callegan further opined that appellant's ongoing bipolar disorder and depression were unrelated to her federal employment. As to the issue of toxicity, she noted that appellant did not appear at the examination to be experiencing any toxic effects from her medications.⁹

Where opposing medical reports of virtually equal weight and rationale exist, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual

⁸ Section 8123(a) of the Federal Employees' Compensation Act provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." See 5 U.S.C. § 8123(a).

⁹ The basic rule respecting consequential injuries is when the primary injury is shown to have arisen out of and in the course of employment every natural consequence that flows from the injury similarly arises out of the employment unless it is the result of an independent intervening cause. *Merlind K. Cannon*, 46 ECAB 1036 (1995). In this case, the Board finds that the opinion of the impartial medical specialist establishes that appellant no longer suffers from toxicity due to the medications he was taking for work-related depression. Even assuming he is still under heavy medication, the impartial medical specialist's report indicates that appellant's ongoing depression for which the medication is prescribed is due to nonwork-related bipolar disorder and not the accepted work condition.

background, must be given special weight.¹⁰ The Board has reviewed the opinion of the impartial medical specialist and finds that it is based on an accurate factual and medical background. Dr. Callegan also provides adequate rationale for her conclusion that appellant has no disability or residuals due to the accepted work-related depression. Accordingly, since her opinion is reasoned, the Board finds that it is entitled to special weight. Because Dr. Callegan's report supports the Office's finding that appellant has no continuing residuals or disability due to work-related depression or stress, the Board concludes that the Office met its burden of proof in terminating appellant's compensation.

The decisions of the Office of Workers' Compensation Programs dated September 19 and January 7, 2002 are hereby affirmed.

Dated, Washington, DC
May 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ See *Kemper Lee*, 45 ECAB 565 (1994); *Roger S. Wilcox*, 45 ECAB 265 (1993).